



CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1309

[CPSC Docket No. 2022-0024]

Ban of Crib Bumpers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On May 16, 2022, the President signed into law the Safe Sleep for Babies Act of 2021, requiring that crib bumpers, “regardless of the date of manufacture, shall be considered a banned hazardous product” under the Consumer Product Safety Act (CPSA). Pursuant to this authority, CPSC is proposing to codify the ban on crib bumpers pursuant to the Safe Sleep for Babies Act, and under a separate document, published elsewhere in this issue of the *Federal Register*, terminate the rulemaking on crib bumpers/liners under the Consumer Product Safety Improvement Act of 2008 (CPSIA).

DATES: Submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2022-0024, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (e-mail), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7479. If you wish to submit confidential business

information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: To review background documents or comments received on the proposed codification of the Ban on Crib Bumpers, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2022-0024, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Timothy P. Smith, Project Manager, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301)987-2557; email: tsmith@cpsc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 3 of the Safe Sleep for Babies Act of 2021, H.R. 3182, Public Law 117-126 (SSBA), CPSC is issuing a proposed rule to codify the ban on crib bumpers under the SSBA. Additionally, under a separate *Federal Register* document, published elsewhere in this issue of the *Federal Register*, the Commission is terminating the pending rulemaking on crib bumpers/liners that CPSC initiated under section 104 of the CPSIA, CPSC Docket No. CPSC-2020-0010.

I. Background and Statutory Authority

On April 3, 2020, the Commission published a notice of proposed rulemaking (NPR) that set forth proposed requirements for a safety standard for crib bumpers/liners pursuant to section 104 of

the CPSIA (85 FR 18878). The Commission received comments on the proposed rule but has not published a final rule.

On May 3, 2022, Congress passed the SSBA, which the President signed on May 16, 2022. Section 3 of the SSBA requires that, not later than 180 days after enactment, “crib bumpers, regardless of the date of manufacture, shall be considered a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).” 15 U.S.C. 2057e.

In light of the SSBA’s mandate that crib bumpers shall be considered a banned hazardous product under section 8 of the CPSA, CPSC no longer proposes to regulate crib bumpers under the CPSIA. By separate *Federal Register* document, CPSC is terminating the rulemaking to establish a consumer product safety standard for crib bumpers/liners.¹ Instead, CPSC now proposes to achieve a similar improvement to safety by codifying the ban on “crib bumpers,” as defined in section 3 of the SSBA, as banned hazardous products.²

II. Description of Proposed Ban on Crib Bumpers

In this rulemaking, CPSC proposes to codify the SSBA’s mandate that “crib bumpers” are banned hazardous products, as set forth below.

A. Definitions

The Commission proposes codifying the definition of “crib bumper” used in the SSBA, which states that “crib bumper”:

- Means any material that is intended to cover the sides of a crib to prevent injury to any crib occupant from impacts against the side of a crib or to prevent partial or complete access to

¹ The NPR used the terms “crib bumpers,” “crib bumpers and liners,” and “crib bumpers/liners,” but this NPR applies only to “crib bumpers” as defined in the SSBA.

² On July 19, 2022, the Commission voted 5-0 to issue this notice of proposed rulemaking.

any openings in the sides of a crib to prevent a crib occupant from getting any part of the body entrapped in any opening;

- Includes a padded crib bumper, a supported and unsupported vinyl bumper guard, and vertical crib slat covers; and
- Does not include a non-padded mesh crib liner.

B. Effective Date

The SSBA states that crib bumpers shall be considered banned hazardous products “not later than 180 days after the enactment of this Act,” *i.e.*, not later than November 12, 2022. Applying the 180-day effective date referenced by Congress would avoid confusion among manufacturers and retailers, while also being consistent with the 6-month implementation period the Commission proposed in its 2020 NPR to establish a safety standard for crib bumpers/liners. Therefore, CPSC proposes to make the effective date for the ban on crib bumpers November 12, 2022.

C. Inventory

The SSBA states that the ban applies to crib bumpers “regardless of the date of manufacture.” Therefore, crib bumpers manufactured before the ban becomes effective will be banned hazardous products beginning on the effective date of the SSBA, as well as any crib bumpers manufactured or sold after the effective date.

III. Preemption

Section 3(b)(2)(A) of the Executive Order 12988, *Civil Justice Reform* (Feb. 5, 1996), directs agencies to specify the preemptive effect of any rule. 61 FR 4729 (Feb. 7, 1996). Because the SSBA states that crib bumpers are banned hazardous products, any state performance standards for a “crib bumper,” as defined in the SSBA (which expressly excludes non-padded mesh crib liners), would be inconsistent with federal law, and therefore, preempted.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. sections 601-612, requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses, and identify alternatives that may reduce such impact, unless the agency certifies that the rule if promulgated, will not have a significant economic impact on a substantial number of small entities. The SSBA will take effect no later than November 12, 2022. Because the proposed rule is limited to codifying section 3 of the SSBA, with an effective date of November 12, 2022, the proposed rule imposes no additional economic impact on small entities beyond the requirements of the SSBA itself. Therefore, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Considerations

The Commission's regulations address whether the agency must prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions that have "little or no potential for affecting the human environment" do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c). The proposed rule codifying section 3 of the SSBA falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

VI. Paperwork Reduction Act

The proposed rule to codify crib bumpers as a banned hazardous product contains no information collection requirements that would be subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). However, if the Commission requires testing and certification to this ban, the Commission will expand the existing control number for Third Party Testing of Children's Products, OMB Control No. 3041-0159.

VII. Request for Comments

We invite comments on all aspects of the Commission's proposal to codify the ban on crib bumpers in section 3 of the SSBA with an effective date of November 12, 2022. Comments must be

submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this document. CPSC specifically requests comment on the following:

A. Effective Date: The Commission proposes to implement the crib bumper ban in the SSBA with an effective date of November 12, 2022. Should the Commission adopt this proposed effective date, or an alternative date “[n]ot later than 180 days after the date of enactment”? If the commenter believes that an effective date later than November 12, 2022, is permitted under section 3 of the SSBA, what is the legal basis for that assertion, and what later date should be adopted?

B. Testing and Certification: When a ban does not remove all products in a product category from the market, testing and certification requirements may apply. For example, CPSC requires a General Certificate of Conformity (GCC) for certain banned hazardous products. *See, e.g.,* <https://www.cpsc.gov/Business--Manufacturing/Testing-Certification/Lab-Accreditation/Rules-Requiring-a-General-Certificate-of-Conformity>, CPSC’s website providing guidance that bans set forth in 16 CFR parts 1304, 1305, and 1306 require a GCC. In this case, non-padded mesh crib liners are not within the scope of the SSBA’s ban on crib bumpers. Because the crib bumper ban does not eliminate non-padded mesh crib liners from the market, what, if any, testing and certification requirements remain? For example, should CPSC require certification to the ban for non-padded mesh crib liners to demonstrate that a product is *not* within the scope of the ban? Why, or why not? Additionally, should the Commission add “non-padded mesh crib liners” to the list of durable infant or toddler products that require a registration card? Why, or why not?

List of Subjects in 16 CFR Part 1309

Administrative practice and procedure, Consumer protection, Infants and children.

For the reasons stated in the preamble, the Commission proposes to add part 1309 to title 16 of the Code of Federal Regulations to read as follows:

PART 1309 – BAN OF CRIB BUMPERS

Sec.

1309.1 Purpose and scope

1309.2 Definitions

1309.3 Banned hazardous product

1309.4 Effective date

Authority: Sec. 3, Pub. L. 117-126, 136 Stat. 1208. 15 U.S.C. 2057e.

§ 1309.1 Purpose and scope

The purpose of this part is to prohibit the sale of crib bumpers, as defined in § 1309.2, as set forth in the Safe Sleep for Babies Act of 2021.

§ 1309.2 Definitions

Crib bumper, as used in this part:

- a. Means any material that is intended to cover the sides of a crib to prevent injury to any crib occupant from impacts against the side of a crib or to prevent partial or complete access to any openings in the sides of a crib to prevent a crib occupant from getting any part of the body entrapped in any opening;
- b. Includes a padded crib bumper, a supported and unsupported vinyl bumper guard, and vertical crib slat covers; and
- c. Does not include a non-padded mesh crib liner.

§ 1309.3 Banned hazardous product

Any crib bumper, as defined in section 1309.2, regardless of the date of manufacture, is a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057).

§ 1309.4 Effective date

The effective date of this ban is November 12, 2022.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022-15906 Filed: 7/25/2022 8:45 am; Publication Date: 7/26/2022]